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Mandatory Retirement And Older Workers:

Encouraging Longer Working Lives

Jonathan R. Kesselman

In this issue...

Mandatory retirement and other workplace practices combine with public pension and taxation policies to curtail productive working lives. These practices and policies are based on deficient economic arguments and are in urgent need of fundamental reforms.

The Study in Brief

Contractual mandatory retirement (CMR) that results from collective agreements and associated pension plans forces many older workers to leave their jobs earlier than they desire. Still permitted in most Canadian provinces, CMR has been perpetuated by economic arguments that the practice serves beneficial functions for employers and their workers. However, this paper shows the economic case for CMR to be deficient on several grounds:

- Proponents say CMR represents voluntary agreements that must bring benefits to both parties. Yet, CMR provisions typically are not agreements between individual workers and their employers but rather the result of collective agreements. Hence, some workers (especially women and recent immigrants) may wish to work longer than the median union voter, but will be constrained by CMR.
- Supporters say CMR allows for deferred compensation programs that bring significant economic benefits in worker loyalty and diligence. It is further asserted that a ban on CMR would be costly to employers in training and monitoring of workers. Yet, jurisdictions that banned CMR many years ago — Manitoba, Quebec, and the United States — have reported none of the predicted adverse consequences.
- Some commentators assert that CMR serves to open up work and promotion opportunities for younger workers. However, this argument runs counter to what economists call the "lump-of-labour" fallacy; a healthy economy is actually limited in its growth by the availability of workers of all ages. Moreover, the looming shortage of skilled workers means that the economy would benefit from extending average working lives.
- The CMR argument ignores the social costs that parties to CMR agreements do not consider, but that are essential to a public-policy perspective. These include the impact of workers retiring earlier than they want to on tax revenues, public pension and health costs, and the economy. With the prospective fiscal stresses from an aging population and shrinking workforce, the impact is a further reason for abolishing CMR.

Current policies permitting CMR are costly to the economy as well as a violation of older workers' human rights. Additional legislative or judicial bans on mandatory retirement would complement other advances in workplace practices and public policies affecting older workers to bring significant benefits to individuals, businesses, and the economy.

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Forced retirement of workers at age 65 results from the terms of many collective agreements and employer pension plans, creating a practice that can be called contractual mandatory retirement (CMR). While no government in Canada requires workers to retire at 65, most provinces continue to permit CMR despite the implicit age discrimination. Policies allowing CMR have been perpetuated through economic arguments about its benefits to employers and workers. This paper takes a critical look at the economic case for CMR and finds its key arguments to be deficient and out of tune with contemporary needs. The paper also examines other workplace practices and public policies affecting older workers and considers reforms that would complement bans on CMR to encourage longer productive working lives.

Within Canada CMR is banned only in Manitoba and Quebec, since 1982 and 1983 respectively, and in 1986 Ottawa outlawed it for federal civil service employment.[1] All the other provinces permit CMR either by limiting coverage of their human rights codes to workers under 65 or by explicitly exempting CMR in their codes (Table 1).[2] In addition, mandatory retirement is allowed for work where age is a "bona fide occupational requirement," such as firefighters and airline pilots. Hence, in parts of Canada an employer can force retirement at age 65 or earlier even without a pension plan or collective agreement, while in other jurisdictions such provisions must exist to justify CMR. Most recently the issue arose in Ontario, where the former government drafted a bill to ban CMR, and the new Liberal administration has pledged to proceed.[3] The United States, Australia, and New Zealand have already banned CMR.

Economic analysis has been developed to explain the CMR phenomenon and to show the benefits that potentially arise for employers and workers from such agreements (see Lazear, 1979; Pesando, 1979). In essence, a company offers a pattern of wages and pension benefits that underpays its workers during early years, relative to their productivity, and overpays them during later years. This system, known as deferred compensation, provides incentives for employees to stay with companies for a long time, participate in training, and apply themselves diligently at work. It also enables employers to invest in workers' job-specific skills with

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1 Gunderson (2003) provides historical and institutional details on legislation governing CMR in Canada.

2 The latter practice at least protects older workers from other forms of age-related discrimination in the workplace. Employment discrimination by age in the business sector is governed solely by provincial legislation, since the Charter's restrictions on discrimination apply only to legislative and governmental actions. However, the human rights codes of the provinces are themselves subject to Charter review. See footnote 52.

3 Bill 68, An Act to amend the provisions of certain Acts respecting the age of retirement, 4th Session, 37th Legislature, Ontario, 52 Elizabeth II, 2003, given 1st reading on May 29, 2003; the bill died on the order paper. "Ontario Will Stop Forcing Workers To Retire," Globe and Mail, January 29, 2004.

Table 1: *Contractual Mandatory Retirement in the Canadian Jurisdictions*

Jurisdiction	CMR allowed		CMR banned
	In general, age discrimination in employment not protected for persons aged 65+	Otherwise, age discrimination in employment protected for persons aged 65+	Age discrimination in employment protected for all persons aged 18+
Alberta		X	
British Columbia	X		
Manitoba			X
New Brunswick		X	
Nova Scotia[a]		X	
Newfoundland	X		
Ontario	X		
P.E.I		X	
Quebec			X
Saskatchewan	X		
Territories		X	
Federally regulated[b]		X	
Federal civil service			X

Provisions typically are governed by human rights legislation; in Quebec, they are also governed by the *Labour Standards Act*. Mandatory retirement at a specified age is permitted in all jurisdictions in occupations where age is deemed to be a "bona fide occupational requirement." Some jurisdictions do not permit mandatory retirement unless it is contractual - that is, covered by the terms of a collective agreement or pension plan.

a Mandatory retirement at 65 is not considered discriminatory if this is a standard practice in the workplace.

b Mandatory retirement is not considered discriminatory if an individual has reached the normal age of retirement for employees working in similar positions.

Source: Fourzly and Gervais (2002, pp. 156), Gunderson (2003, p. 321).

some assurance they will stay long enough for the companies to reap the returns, and it reduces employers' costs of job turn-over, hiring, training, and worker monitoring.[4] Proponents argue that by placing a cap on the period of overpayments, CMR facilitates more efficient agreements. Moreover, CMR gives employers a non-disputatious means of terminating workers with declining productivity at age 65. Since CMR is a voluntary agreement between the employer and its workers, everyone must be better off, and it is hard to see why there is a public interest in banning such arrangements.

At first blush, the economic rationale for CMR appears seductively attractive, but on further scrutiny its blemishes appear. The CMR argument has major deficiencies in three areas. First, the analysis assumes that CMR can properly be characterized as voluntary, utility-enhancing agreements among companies and workers. Second, the CMR argument asserts that the practice brings significant economic benefits and that banning it would sacrifice those benefits. Third, the analysis ignores the social costs of CMR that parties to such agreements do not consider, but that are essential to the public policy perspective. This paper examines each of these areas and finds the CMR argument to be fundamentally flawed. A ban on CMR would both eliminate age discrimination and bring economic and fiscal benefits. Such a ban would also complement other public policy and employer changes to encourage longer working lives, and this paper thus considers several closely related issues for older workers.

Behavioural Assumptions of CMR

A key assumption of the CMR analysis is that all agreements for retirement at 65 are fully consensual among the parties concerned.[5] In the words of one supporter, CMR is "part of a private contracting arrangement between consenting parties ... mutually agreed to by employers and employees who generally have considerable individual or collective bargaining power" (Gunderson, 2004, pp. 2-3). That consensual characterization might be accurate if all agreements were between an individual employee and the employer, such as the employment contract of an executive that specifies a termination date or age. However, almost all workers subject to CMR are covered by collective agreements rather than individual contracts. The linkage between CMR and pension plans, most often found in unionized workplaces, is also very strong. In a sample of older workers from the U.S., 62 percent of workers with a pension plan had CMR, and 86 percent of those with CMR had a pension plan (Lazear, 1979, p. 1281). In Canada, CMR is highly concentrated in work covered by collective agreements or formal personnel policies, not individual contracts (Gunderson and Pesando, 1988, p. 33).

4 Note that wage rates below productivity levels will also be accepted by workers in their earlier years if they are gaining general human capital skills on the job that are readily transferable to employment elsewhere.

5 In this section I question the assumption implicit in the CMR theory that all workers have the same preferences about when to retire, so that a collective decision will satisfy all of their needs. In a later section, I introduce heterogeneity in the productivity levels of older workers as well as heterogeneity in their desired retirement age. Early Canadian advocates of CMR cited possible differences of preferred retirement ages between younger and older members of a union, but asserted that the union would properly mediate (Gunderson and Pesando, 1988).

When an organization like a trade union mediates between the wishes of employees and those of the employer, the consensual nature of the relationship for the individual worker weakens. The union organizers may have a preference for mandatory retirement, perhaps as a way of opening positions for younger workers. Even if the union's leadership is fully responsive to its members, it will follow the preferences of its median voters. With respect to any issue, including the imposition of mandatory retirement, the union cannot satisfy the tastes of all its members. Those who would prefer to work beyond 65, typically a minority, are compelled to accept the terms negotiated for all members of the union at that establishment.

One might argue that workers who anticipate that they will want to continue working beyond 65 should simply find a job with a non-union employer or one that does not practice CMR. Yet, they may work in an industry or occupation that is universally unionized, or they may work in a locale where there is a dominant unionized employer. Should such workers be expected to change their industry occupation, or residence in order to find employment that does not bind them to retire at 65? That kind of mobility may impose large costs on individuals in terms of retraining or relocation or loss of work by a spouse. And taking work that is not unionized entails a loss of wages and fringe benefits in most occupations.

Moreover, some groups may have a stronger preference for working beyond 65 than the average worker.[6] For example, women who have entered the labour force relatively late, after raising children or marriage breakdown, as well as recent immigrants may wish to work until later ages than typical non-immigrant male workers. These groups may have to work until a later age to qualify for larger pension benefits based on years of service, or they may need additional work years to save for their retirement. These concerns are of particular salience to women workers with their longer life expectancies. To the extent that these workers are employed alongside typical male workers who favour CMR, their ability to choose is constrained.[7] It is telling that both the women justices took the minority side in the Supreme Court's landmark 1990 decisions on CMR. They alone supported the elimination of mandatory retirement and observed that:

> women workers are unable to amass adequate pension earnings during their working years because of the high incidence of interrupted work histories due to child-bearing and child-rearing. Thus, the imposition of mandatory retirement raises not only issues of age discrimination but also may implicate other rights as well [that is, sex discrimination].[8]

Even if all CMR were clearly based on consensual agreements between individuals and their employers, one might question the ability of most people to

6 Among U.S. workers covered by CMR agreements, researchers found that the specified retirement age was higher in agreements involving women than men and those involving blacks than whites, which supports the kind of argument made in the text. See Lazear (1979, p. 1282).

7 If this effect causes women to choose types of work that do not have CMR, the practice can also promote occupational segregation by gender.

8 McKinney v. University of Guelph, [1990] 76 D.L.R. (4th) 545, at 627.

predict their situation and needs many years into the future.[9] Most workers in their 30s and 40s find it hazardous to forecast their financial or health status or even marital and dependency status at 65. Many who might, at a younger age, like to retire at 65 will find that when they reach that age their circumstances are quite different than anticipated. For example, some workers will find that they are far short of their lifetime savings goals on account of marital dissolution, child support payments, the costs of second families, or simply poor investment returns.

Many individuals subject to CMR find themselves involuntarily thrust back into the job market. Typically, even in those provinces that outlaw age discrimination beyond 65, seniors face significant difficulties in finding work that fully utilizes their skills and experience. The time required to find work after being laid off is much longer for workers 55-to-64 than for younger workers, and this disadvantage extends to workers terminated by CMR at 65.[10] Older job seekers are shut out of most positions that require much job-specific training by prospective employers, who cannot count on a long enough period to recoup their investment. Most of these workers will also suffer a significant earnings decline reflecting the loss of job-specific skills and experience that were useful only to their previous employer.

In short, the behavioural assumptions needed to justify CMR are, at best, relevant to one-to-one bargaining between individual workers and their employers. The intermediary role of unions in this process disrupts the consensual nature of the agreements for many workers. Even if they can find other work that does not carry CMR, these individuals are likely to bear heavy costs from doing so. And even where younger workers make consensual agreements to bind themselves to CMR, they will often find their circumstances in later life have changed in ways that they could not have predicted. Most workers who are forced to retire by CMR but wish to continue working will suffer large earnings losses in their alternative employment, and some will be driven to leave the labour force permanently.

Asserted Beneficial Effects of CMR

Proponents of CMR claim that allowing the practice yields significant positive benefits to workers, their employers, and the economy more broadly. A statement of these putative benefits in the contemporary Canadian context asserts that CMR serves to:

> [O]pen job and promotion opportunities for younger workers ... [and] facilitate retiring with dignity and reduce the need for more constant monitoring and evaluation and possibly ultimate dismissal of older employees ... [and] enable deferred compensation [which serves] ... purposes, such as reducing unwanted turnover and shirking, enabling retrospec-

9 The assumption of good foresight, as well as the assumption of rational choices by younger workers — both essential for the optimality of CMR — have previously been challenged by Krashinsky (1988). Moreover, economic analysis now recognizes the possibility of myopic behavior by younger workers in their lifetime savings and retirement planning decisions; see Diamond (1977) and Diamond and Köszegi (2003).

10 Workers 55-to-64 take longer finding work between jobs than workers 25-to-54, and this difficulty is particularly marked for those terminated by a layoff. Older workers were twice as likely as younger workers not to have a new job one year after layoff, 63 percent versus 30 percent. See Statistics Canada (1998, p. 22).

> tive and periodic monitoring, and encouraging worker commitment, loyalty and bonding to the company. (Gunderson, 2004, p. 3)

Almost all these benefits were also promulgated in the original analysis supporting CMR, with the exception of the first item. Economist Edward Lazear intended his theory to explain the practice of CMR as self-interested, mutually beneficial behaviour by employers and their current employees; he rejected the young-worker view as an explanation of CMR (1979, p. 1263).

It is instructive to assess all of these claimed benefits for allowing CMR, including the often-cited young worker view. If the benefits are found to be limited, absent, or even negative, then banning CMR could prove to be innocuous and or even beneficial. I assess the claims under three headings: employment effects, worker productivity and monitoring, and deferred compensation and incentives. The claims are found to be mostly hypothetical rather than proven, and the little evidence that exists is sketchy, often inconclusive, and more suggestive of social costs than benefits associated with allowing CMR.

Employment Effects

One of the most commonly cited arguments for mandatory retirement is that it is needed to open employment and promotion opportunities for younger workers. This point has been made by leaders in business, unions, and public sector institutions such as universities.[11] Indeed, this young-worker argument was a part of the evidence accepted by the Supreme Court of Canada in its decision upholding CMR. The majority judgment stated:

> The problem of unemployment would be aggravated if employees were unable to retire their long-term workers. ... [T]here is a significant correlation between those who retire and those who may be hired.[12]

The argument that CMR is needed to open jobs for younger workers runs counter to elementary economic principles.[13] It assumes that the economy offers only a given total amount of work — what economists call the lump-of-labour fallacy. While job displacement may arise in the very short run, in narrowly defined occupations, or in recessionary periods, over the long term the economy can create as many jobs as there are workers able and willing to fill them. Indeed, an economy's long-run growth is constrained by the availability of workers with the requi-

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11 For example, the president of the Ontario Federation of Labour said that mandatory retirement "provides job opportunities for young people coming into the workplace" (Krashinsky, 1988, p. 50).

12 McKinney v. University of Guelph, [1990] 76 D.L.R. (4th) 545, at 658, 653. Nevertheless, the Court's decision did not give much weight to this point. Note that the Court rendered its opinion in the context of CMR for professors at universities, where limited public funding would cause deferred retirements to limit hiring of younger faculty.

13 An early study of the effects of banning CMR in Ontario reached a similar conclusion: "The argument that ending compulsory retirement would reduce the job opportunities available in the labour force is not substantiated by economic analysis ...." (Pesando, 1979, p. 23).

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site skills, motivation, and experience. Moreover, young workers are hardly a substitute for the skilled and experienced employees who are forced to leave because of CMR provisions.

The young-worker argument is particularly archaic under contemporary labour market conditions, as well as those forecast for future years. The Canadian economy is entering an era of skill shortages and even shortages of workers with more limited skills. Training young workers and upgrading the skills of all employees must be complemented by policies to encourage older people to contribute their abilities as long as possible. CMR policies not only cut short the working lives of some older people, but they also cause some of the most productive middle-aged workers to move to other jurisdictions that do not allow CMR.[14]

Those who fear a flood of elderly workers if CMR were abolished should consider the current situation. Two-thirds of workers choose to retire before 65, 43 percent retire before 60, and the average age of retirement for all workers was 61 in 1999, down more than two years since 1989. Still, 11.8 percent of the population 65-to-69 were active in the labour force in 2001, and more than one-fifth of all workers 45 and older planned to retire after 65 or never to retire.[15] About half of Canadian workers are in jobs with CMR, and an estimated 6 percent-to-20 percent of them would like to work beyond that age. Hence, an additional 3 percent-to-10 percent of workers would choose to continue in their jobs if CMR were banned.[16] However, the total employment effect of a ban on CMR is likely to be smaller, as some workers now forced to retire find other jobs or continue working on special terms with their original employer.

The policy-relevant questions about the employment effects of CMR are how many would continue to work and how long they would work if not constrained by CMR. The only recent empirical study using Canadian data found these effects difficult to estimate reliably, but suggested that the total employment impact of abolishing CMR would be quite small (Shannon and Grierson, 2004).[17] A U.S. study that focused on university professors found a much larger impact of abolishing CMR, which is not surprising in view of that occupation's high pay and job satisfaction and limited physical demands (Ashenfelter and Card, 2002). In comparative terms, the proportion of people 65-to-69 who work is twice as high in the U.S. (which bans CMR) as in Canada, though factors other than CMR may explain most of the difference.

Overall, the available evidence suggests that the abolition of CMR is unlikely to have a major impact on average retirement ages or years of work in Canada.

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14 This phenomenon at Ontario universities is cited by the Ontario Human Rights Commission (2001, p. 37).

15 These statistics are taken from Human Resources Development Canada (2002).

16 These figures were provided in Gunderson (2004, p. 2). The half coverage by CMR was confirmed in a recent survey by Hewitt Associates (2003, p. 5), which found that 52 percent of Canadian companies had an organization-wide mandatory retirement policy (and a few more percent with such policies on an incomplete basis), though the survey's exclusion of companies with fewer than 100 employees likely overstates the figure for the overall labour force.

17 An earlier empirical study by Reid (1988), undertaken just several years after Manitoba and Quebec banned CMR, found the effects on labour force participation rates of people 65 and over to be statistically insignificant.

Hence, any potential adverse effects on younger workers are minimal or non-existent. At the same time, the prospective gains in terms of an enlarged skilled workforce and reduced public finance strains are similarly limited. To achieve the full benefits of an expanded workforce of older people, the abolition of CMR would have to be complemented by adaptations of workplace practices and public policies.

The related claims that CMR opens promotion opportunities for younger workers — and that banning CMR would significantly impede promotions — are equally flawed. Even if this did not run afoul of the lump-of-labour fallacy, the size of the effect would be small. Evidence presented later suggests that a ban on CMR would raise the average retirement age for the overall labour force by just a fraction of one year, most likely less than four months. As a result, a ban on CMR would at most defer the average age for promotions of younger workers by several months. That hardly constitutes a significant blockage for the promotion of younger workers.

Worker Productivity and Monitoring

A central argument for allowing CMR is that the productivity of workers declines as they approach 65 and in the years beyond.[18] Advocates argue that CMR allows for the graceful discharge of workers without the need for harsh and costly monitoring of their performance to determine when they are no longer productive.[19] Indeed, in the landmark McKinney case, the Supreme Court justices asserted that "on average there is a decline in intellectual ability from the age of 60 onwards,"[20] which they used to justify accepting age 65 as a legitimate basis for allowing mandatory retirement. It is ironic that the mean age of the justices deciding the case was 65, three were over 65, and Supreme Court justices can continue holding office until 75.[21]

In empirical studies of the determinants of individual worker performance, there is little evidence that ability or productivity declines with age.[22] The typical pattern is for a worker's productivity to rise over most of the lifetime and then to level off for the last 10 or 15 years. Even if an individual's work skills do eventually decline with advanced age, there is no evidence that this occurs abruptly at 65

18 However, in the formal economic theory of CMR, it is not necessary that the productivity of older workers decline, but simply that their compensation exceeds their productivity.

19 For various statements of this view, see Lazear (1979), Gunderson and Pesando (1988), and Gunderson (2003, 2004). Here I consider the productivity of older workers as an exogenous matter of health status, while in the next section I consider the worker incentive aspects of productivity; both are subsumed in the economic model of CMR.

20 *McKinney v. University of Guelph*, [1990] 76 D.L.R. (4th) 545, at 654.

21 The irony is heightened by the fact that the case concerned the forced retirement of university professors, whose work entails physical and intellectual demands not unlike those of Supreme Court justices.

22 For review of studies, see Sterns et al. (1996); the exceptions are manual and other occupations that rely heavily on physical strength and sensory acuity. Hellerstein et al. (1999) finds that the productivity of workers continues to rise with age, even for the age group 55 and over, though not with statistical significance.

or as early as 65 in most occupations. In white-collar work, one study reported that "reliability and especially experience seemed to compensate for the effects of somewhat reduced physical abilities" (Richter, 1992, p. 181). Moreover, those workers who do experience declining physical, sensory, or mental faculties are more likely to retire voluntarily prior to 65. Current high rates of early retirement reflect this self-selection behaviour as well as responses to the financial incentives in private and public pensions and taxes.

Ordinary economic behaviour ensures that those workers with declining abilities at work will be the ones most likely to choose early retirement. Individuals' labour force participation and retirement decisions can be modeled as a utility-maximizing choice.[23] Utility is derived from income from all sources (including earnings, savings, and pensions), from leisure time, and from job satisfaction. It is natural that the utility of working will decline for individuals as their health status declines, as work becomes more demanding, and as their productivity and job satisfaction declines. Some workers with falling productivity will face declining earnings, but even with unchanged pay levels they will be more inclined to choose early retirement.[24]

Advocates of CMR contend that banning the practice would necessitate costly systems to monitor the performance of older workers to catch those who wish to stay on too long. The noted self-selection process will limit the numbers of older workers who fall into this category. Moreover, because of their age, the work period ahead of them is limited in any event. Employers should be more concerned about any younger workers whose productivity is declining. Those workers have far more years ahead of them when they can constitute a burden to their employers, and they do not have the financial options of public and private pensions to leave the workforce early. In short, employers need effective processes to monitor the productivity of workers at all ages, and little if anything additional would be needed for older workers in the absence of CMR. Despite the claims, there is no evidence of costly new monitoring processes in the Canadian jurisdictions that have banned CMR.

Deferred Compensation and Incentives

Another key aspect of the theory and claims relating to CMR is that there must be a terminal point for the worker's employment in order for deferred compensation to provide effective incentives. Deferred compensation is the practice of paying workers less than their productivity in earlier years and more than their productivity in later years. This deferral can be achieved by a steeply inclined age-earnings profile and by deferred benefits, such as pensions and post-retirement benefits that rise with the worker's tenure. The professed purpose of deferred compensation is to augment people's incentives to work hard to avoid losing it if they are shirking and get fired, while providing incentives to remain with the company a

23 For a textbook presentation of the formal economic model, see Benjamin et al. (2002, pp. 47-49).

24 As noted in a Labour Canada (1985) report: "Poor performers are usually unhappy in their jobs and are anxious to leave as soon as feasible" (Annex, p. 5).

long time, so that employers can reap the returns from their investments in training.

Empirical research offers mixed findings on the existence of deferred compensation, though it does appear to be present in skilled occupations.[25] Yet, an age limit on employment, as imposed by mandatory retirement, is not critical to this process. Proponents of CMR have asserted: "Without such a termination date, compensation could exceed productivity indefinitely and hence the contractual arrangement could not exist" (Gunderson and Pesando, 1988, p. 36).[26] That claim is puzzling, in that workers who continue beyond 65 would not work "indefinitely"; for most, it would be no more than a few additional years. And the previously cited facts about the extent of early retirement cast further doubts about the salience of a cutoff age.

If, for example, all workers now constrained by CMR who wish to continue beyond 65 (about 3 percent-to-10 percent of the labour force) were to work an additional three years, that would add only about one-to-four months on average to working lives.[27] That figure seems hardly large enough to upset deferred compensation arrangements and the putative associated efficiency gains. If deferred compensation were one-third of a worker's productivity (or one-fourth of total compensation) in later years, adding one to four months to the average working life would constitute just 2 percent-to-8 percent of one year's earnings. Averaged over the last 20 years of work in which there is positive deferred compensation, the impact is merely 0.1 percent-to-0.4 percent of total compensation for that period. And based on our earlier analysis, those choosing to work longer would typically be workers with above-average productivity, so the extent of any deferred compensation would be minimized.

Deferred compensation could adjust to the abolition of CMR in many ways if, in fact, there were any adverse effects. The age-earnings profile could be flattened or even decline beyond a specified period for workers with below-average productivity, based on performance reviews. Various adjustments to pension plans, both private and public, could be implemented. Although CMR has been abolished in the U.S. since 1986, there has been no evidence of reduced incentives to work hard or to stay with an employer. If deferred compensation plans did play a role in these incentives, suitable adjustments to those programs must have occurred. Indeed, empirical analysis indicates that age discrimination laws akin to, but broader than, a CMR ban, have actually strengthened long-term incentive contracts by steepening the age-earnings profiles in the U.S. (Neumark and Stock, 1999).

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25 See the findings and studies reviewed in Kotlikoff and Gokhale (1992) and Prendergast (1999, pp. 47-49), which are supportive of deferred compensation. However, Hellerstein et al. (1999) finds that both productivity and compensation rise in lockstep with the worker's age, which runs counter to deferred compensation.

26 This assertion continues to be made, as in a recent labour economics textbook: "Such a contractual arrangement requires a termination date for it to exist. Otherwise, employers run the risk of paying wages in excess of productivity for an indefinite period .... In such circumstances a contractual arrangement involving deferred wages could not persist." Benjamin et al. (2002, p. 407).

27 A survey by the Conference Board of Canada found that "those few employees presently aged 65 who elect to continue working will, in general, leave their employment prior to age 70 and will, on average, probably work for a period of three years beyond age 65." (Dunlop, 1980, p. 40).

It is also questionable whether deferred compensation is as useful an incentive device for the purposes of employers' training their workers as in earlier years. Given the more rapid obsolescence of worker skills, training has become more a recurring process than a one-time event at the start of a worker's tenure with the company. As a result, the returns to the employer's investments in training must be reaped more quickly, and the role of deferred compensation to purchase lifetime loyalty will have diminished. This also means that an employer can invest in training its older workers with some expectation that it will obtain an adequate return before they retire. Additionally, the declining lifetime security of jobs in many occupations weakens the role of deferred compensation in labour market incentives.

Public vs Private Perspective

Even if the CMR process were not deficient on the grounds already cited, it has further problems from a public-policy perspective. The practice of CMR could be socially optimal if the parties directly involved — employers and their employees — captured all the benefits and carried all the costs of their agreements. However, CMR also imposes costs on the rest of society, so that these private, voluntary agreements may not be in the public interest. External costs have a fiscal impact (on tax revenues and public expenditures) and an economic impact arising through the tax burden and the labour market. Because of these external costs not recognized by the parties to CMR, society may have an interest in banning or at least restricting the practice.

Fiscal Impact

With CMR, some workers who would like to continue working beyond 65 are involuntarily terminated from their jobs. While some people may find alternative work after being forced to retire, it often pays significantly less, and others will not succeed in finding work at all.[28] As a result, many people terminated because of CMR will pay less in income, sales, and payroll taxes, and some will begin drawing public pension benefits earlier than if they had been allowed to continue working. The adverse impact on tax revenues would be offset if the forced retirements opened up equivalent, equal-paying jobs for unemployed workers; our earlier analysis indicates that that is not the case. Taken together, the decreased tax revenue and increased public pension cost of CMR will aggravate the fiscal strains that will arise in future years from the bulge of retiring baby boomers.

Part of the reduced earnings from those involuntarily terminated by CMR provisions will be offset by earlier withdrawals of taxable funds from tax-deferred savings plans, such as company pensions and RRSPs. Yet those additions to the tax base are just an acceleration of funds that would have been withdrawn and taxed in later years, if those workers had been allowed to continue. Taxable withdrawals will also be less than the lost earnings, so that CMR exerts a negative net impact on the tax base. If CMR were banned, it would be desirable to raise the age for mandatory dis-

28 See footnote 10.

tributions from tax-deferred savings plans above the current 69; such a change might be desirable in any event in view of rising life expectancies.

CMR can also increase fiscal strains on the expenditure side.[29] For applicants 65 and over, the Canada Pension Plan does not impose any work or earnings test in order to receive benefits. For delayed start of benefits beyond the standard age of 65, the benefit payment is increased by 0.5 percent per month up to age 70, but this provision under-compensates deferred beneficiaries relative to the actuarial cost. As a result, workers who begin their CPP benefits earlier than they would have preferred on account of CMR cost the program money. The Old Age Security pension is paid at 65 irrespective of work, but the reduced earnings for some workers caused by CMR means that there is less tax claw-back of OAS payments from higher earners. The largest impact of CMR on budgetary costs arises through the income-tested Guaranteed Income Supplement (and the companion Allowance) program. Some who would have continued working beyond 65 will be forced to retire and find their incomes decline to a point that they draw GIS benefits.

Additional costs are imposed on provincial budgets from the higher health care costs of workers compelled to retire earlier than they wanted.[30] A variety of medical and dental services and prescription drugs are provided on an income-tested basis by provincial programs (often on more generous terms for seniors than others). Workers forced to retire by CMR provisions are more likely to have incomes fall to the levels at which such benefits are covered. Moreover, those who do succeed in finding other work are less likely to obtain jobs with extended health and dental insurance coverage. There is also growing evidence that physical and mental inactivity can spur the degenerative diseases that afflict many older people, so that forced retirement may further increase public health care costs.[31]

One might question whether the fiscal impact of people's work and retirement decisions is relevant to public policy. However, policy should respect people's preferences and not frustrate attempts to extend working lives. From a public-policy perspective, the appropriate reference point is the work and retirement choices that individuals would make in the absence of the distortions imposed by taxes, public pensions, and regulation of private pensions. Because most such public policies exert incentives for shorter work lives and early retirement and against longer work lives and phased retirement, the fiscal impact is relevant to sound public policy. The fiscal effect of CMR biases that also shorten working lives is similarly germane for policy formulation.

29 The number of OAS beneficiaries is projected to rise from 3.8 million in 2001 to 8.4 million in 2030 and the number of GIS beneficiaries from 1.4 million to 2.2 million. Annual OAS expenditures are projected to rise from $19.5 billion in 2001 to $89.5 billion in 2030 and annual GIS expenditures from $5.3 billion to $18.0 billion. Office of the Chief Actuary (2002, pp. 25, 29).

30 Several provinces pay supplementary cash benefits to lower-income GIS recipients, and their budgets are also affected by CMR-constrained workers.

31 Of course, it is hard to sort out cause and effect between age of retirement and various degenerative ailments. However, one study that was able to isolate causation found that increased labour force activity by seniors reduced their mortality rates (and hence presumably their public health care costs). See Snyder and Evans (2002).

Economic Impact

To the extent that CMR reduces tax revenues and increases public expenditures, this practice puts upward pressure on tax rates. Higher tax rates increase the distortions in the economy and can reduce its efficiency and growth, though the extent of this damage depends on the exact form of the taxes that are increased. The upward pressure on tax rates from CMR will compound other powerful stresses on public finances and tax rates over the next generation. The demographics of the baby boom and bust will radically alter the economic landscape. For the first time in Canadian history, retirees from the labour force will outnumber new entrants. From the current four workers per senior, the balance will shift to just two workers per senior by mid-century.[32] Allowing a practice such as CMR that exacerbates these problems runs counter to desirable public policy.

CMR can also have a more direct adverse impact on economic performance by withdrawing some of the most skilled and experienced workers before they want to depart. Even when those individuals can find alternative work with another employer, that work typically does not exploit the full firm-specific skills and knowledge that they had acquired over years in their previous job.[33] Older workers bring to the workplace a wealth of institutional knowledge and networking connections that cannot be replaced by younger workers. As the Canadian economy enters an era of growing skills shortages, any policy that allows many of the most seasoned workers to be forced out of their jobs seems counterproductive. Simulations by the Policy Research Initiative (2004) find that extending average working lives is one of the most effective ways to maintain the growth of real living standards as the population ages — much more effective than raising immigration levels.

Priorities for Business and Policy

Declining average retirement ages are the result of various forces and incentives. From the evidence reviewed here, CMR is a relatively small part of the explanation. If CMR were banned throughout Canada, that would improve the ability of workers to continue beyond 65, though additional changes would still be needed to encourage all older workers. The requisite changes involve business practices as well as public policies. While some of the changes relate directly to a ban on CMR, others relate to older workers under 65. Yet, the continued allowance of CMR itself acts as a barrier to important advances in business practice and public policy. Rather than regarding older workers as a liability, Canadian business leaders and policymakers should be thinking of them as an important asset in an economy with looming labour shortages.

32 These figures are based on projections that assume the continuation of existing trends in immigration, birth, death, and participation rates. See Baxter and Ramlo (2003, p. 21).

33 While their current employer could, theoretically, rehire these workers under a special contract immediately after retiring them, often tradition or institutional rigidities (including collective agreements) stand in the way.

Older Workers in the Economy

Just as women were the major driver of the Canadian labour force over the past two generations, older workers have the potential to play that role in the future. Forecasts show that by 2010 fully 70 percent of the net increase in the working age population from 2000 will arise in ages 55-to-64, and by 2020 all of the net increase will be in that age group (Robson, 2001, p. 7). Moreover, growth in the population 65 and over is poised to accelerate rapidly. It makes little sense that average retirement ages have been declining at the same time that life spans have been rising, the health status of older people improving, and the physical demands of most jobs falling. Increased time spent in formal education before starting work has further truncated the period of productive work. A person entering the workforce at 22 and retiring at 61 is spending just 39 years at work, barely half the lifetime.[34]

Demographic trends in addition to improving health and life expectancies are rapidly becoming more favourable for the extended employment of older workers. Canadians have been increasing their average educational levels, most notably for younger cohorts, but progressing over time to older ones. In 1990 almost two-thirds of the population aged 55-to-64 had less than high school completion, but by 2010 this figure will fall to just one-quarter. In 1990 only one-fifth of those aged 55-to-64 had a college, university, or technical degree, a figure that will jump to nearly one-half in 2010.[35] Ten years later, similar advances in educational attainment will apply to the group aged 65-to-74. Hence, failure by business and governments to undertake policies that reverse early retirements and that allow individuals to continue working beyond 65 will have a much more adverse economic impact than in the past.

Adaptation of Business Practices

The rapid increase in the share of the workforce 55 and older will make it imperative for all employers to adapt a wide range of employment and compensation practices to the varying needs and preferences of this age group. A ban on CMR would increase the number of older workers for whom such provisions apply and augment the benefits to employers from making these adaptations. This older workforce will also become increasingly female.[36] Workplace changes that would facilitate the productive employment of older workers include work scheduling,

34 As argued by the OECD for Canada and other countries, a prime challenge for policy will be to raise the average age of retirement in order to obtain a better balance between people's economically active life and their period of retirement. For evidence on and analysis of this issue in a cross-country context, see OECD (2001, chapter 5).

35 These figures were compiled from the Labour Force Survey by the Régie des rentes du Québec (2003, p. 23). To the extent that longevity is correlated with educational level, the figures for persons aged 65-to-74 in 2020 are likely to be even more favourable than for those aged 55 to 64 in 2010. For Census figures on educational attainment by seniors in 2001, see Duchesne (2004, pp. 6-8).

36 The share of women in the labour force aged 55-to-64 has grown from one in three 25 years ago to two in five; the share of women among workers 65 and over has grown from one-quarter to one-third. (Robson, 2001, pp. 8-9).

flexible hours, voluntary work-time reductions, vacation and leave policies, phased retirement, job assignment, workplace organization, hiring and contracting strategies, training practices, and benefit and compensation methods.[37]

Two types of employee benefits raise special issues for workers over 65.[38] Disability and life insurance become particularly costly for older workers; given the expectation that most retirement savings will be attained by 65, it may be reasonable to allow differential treatment for such workers. In Manitoba, where CMR is banned, the Human Rights Commission has acknowledged the difficulty of assessing when an older worker on disability benefits would have retired. Accordingly, the Manitoba Commission allows for long-term disability benefits to be terminated when a beneficiary reaches 65, unless there are grounds for expecting recovery and a return to work. A provincial human rights code that banned CMR might similarly allow disability coverage to cease for workers beyond a standard retirement age. Reduced coverage for employer-paid life insurance might be allowed, based on the higher actuarial risk of death for older workers. Many group life insurance plans already provide coverage as a multiple of the employee's salary that declines with age, which holds constant the cost per worker. Older workers need less life insurance coverage because they have fewer and older dependants, and they have completed more of their lifetime savings.

Employer-based pension plans raise further issues for workers over 65 if CMR were banned. Benefit accruals could be allowed to cease after the normal retirement age, and for defined benefit plans the actuarial adjustment in benefits could be waived for delayed retirees. The Ontario Pension Benefits Act does precisely that; it caps the accrued benefits for workers beyond 65 who are not yet drawing their benefits. However, the provinces that banned CMR have explicitly barred employers from stopping further benefit accruals and from failing to make actuarial adjustments to benefits for workers beyond the normal retirement age (Gunderson and Pesando, 1988, p. 34). Of course, a province could choose to ban CMR but still allow these pension benefit practices for older workers. The choice is between making it more attractive for companies to employ older workers and making it more attractive for workers to continue beyond 65.[39] At a minimum, defined benefit pension plans should modify their benefit formulas, typically based on average earnings in the last few years of work, to facilitate phased retirement.

37 See the discussion of these issues by Gunderson (1998), Robson (2001), and Fourzly and Gervais (2002).

38 Extended health and dental insurance plans have offsetting costs for employers of older workers. Their average expenses are typically higher, but over 65 more of their expenses, such as prescription drugs, may be covered by provincial benefit plans. A recent survey of Canadian employers found that the most-cited concern related to a prospective ban on mandatory retirement was "the potential for increased benefit costs," cited by 58 percent of respondent companies, but no detail was given on the specific types of costs (Hewitt Associates, 2003, p. 7).

39 See Pesando (1979, pp. 9-10) for a numerical example of the dramatic impact on benefits to the employee and costs to the employer of various alternatives for treating the defined benefit pensions of late retirees.

Public Policy Responses

Several aspects of federal taxation and pension policies encourage early retirement and discourage working beyond 65.[40] The tax claw-back on Old Age Security benefits applies to individuals with incomes above $59,800. By excluding labour earnings from the claw-back, it could still serve to target benefits on low-to-moderate income retirees, without discouraging older workers.[41] An extra income tax credit is provided for filers 65 and over, but its phase-out with earnings over $29,100 discourages work. This special credit has no rationale on equity grounds, and it could be gradually eliminated as the basic filer credit rises in future years. Tax-sheltered retirement savings plans are required to begin minimum distributions in the year after an individual reaches 69. The required distributions could be reduced by the amount of any labour earnings in the year, which would encourage continued working. The Income Tax Act also contains restrictions that discourage phased retirement, and these should be remedied.[42]

The standard age for receiving a full public pension in Canada was set at 65 in the mid-1960s with the introduction of the Canada Pension Plan and the GIS and changes to Old Age Security. At that time, Canadians 65 and over were just 7.6 percent of the population, while they are 12 percent currently and will grow to a projected 23 percent by 2030 — triple their share when age 65 was adopted for public pensions. Because of subsequent changes in longevity, health status, and job demands, it is time for Canada to revisit the standard age for payment of full public pensions.[43] Other countries have already addressed this issue. In 1983, the U.S. passed legislation to raise the standard age for full payment of Social Security benefits to 67 from 65, a process begun in 2001 and to be completed in 2027. Recently, a pension reform commission in Germany recommended raising the standard retirement age to 67 from 65, and similar initiatives and the Nordic countries have undertaken similar initiatives.

Old Age Security and the associated GIS/Allowance is the largest expenditure program of the federal government, and its costs will mount over the coming years.[44] Unlike the Canada Pension Plan, OAS has no self-financing mechanism so that its financial burden will fall upon general revenues, draw public funds from other uses, and raise the tax burdens on the declining share of the population at work. Raising the age for OAS entitlement by two years would both reduce the cost pressures and increase the incentives for longer working lives. This increase

40 For discussion of the retirement incentives of tax provisions, see Gunderson (1998); for estimates of the retirement incentives of public pensions and income support for seniors, see Baker et al. (2003).

41 This change would reduce revenues from the claw-back, but to the extent that it increased incentives to continue working, it would augment personal tax and payroll tax revenues.

42 The restrictions prohibit a worker from simultaneously collecting and accruing benefits within the same defined benefit plan and further require the actuarial value of benefits payable at final retirement to be reduced by the value of benefits paid during a period of phased retirement.

43 The issue of raising the standard age for full CPP benefits was actively discussed in the 1990s review of the program's finance, but it remains equally relevant today. For example, Brown (1995) suggested raising the age to 69, while Robson (1996) suggested age 70.

44 See footnote 29.

could be phased in slowly by adding, for example, one month per year from 2007 to 2030. Since 1966, when the OAS entitlement age was reduced to 65 from 70, the life expectancy for a 65-year-old has already increased by 2.5 years. By 2021 it is projected to be nearly five years higher than in 1966, which means that a retirement age of 70 in 2021 corresponds in life expectancy to an age of 65 in 1966.[45]

Increasing the standard age for full CPP benefits would further extend working lives. For example, the age for full benefits could be gradually lifted to 67 from 65. The benefit discount for early retirement beginning at age 60 could be increased beyond an actuarial reduction, and the rate of benefit enhancement for persons retiring beyond the new standard age could be increased.[46] The CPP program does not have any penalty for earnings beyond age 65, but it requires the individual to have two months of low or no earnings in order to begin the benefit payment. This provision induces some older workers who would otherwise continue working to retire, and its removal would augment incentives for longer working lives. Raising the ages for full CPP benefits and OAS entitlement would also raise expectations about the normal retirement age and help to reverse the trend toward early retirement.

Raising the standard retirement age for full public pension benefits is a reasonable adaptation to rising longevity, improved health of older workers, and the reduced physical demands of most jobs. It is also unavoidable if Canada wants to prevent growing fiscal pressures and inequitable transfers from younger to older cohorts. However, for older workers with limited skills and heavily manual occupations, this change could bring undue financial hardships. The change should thus be accompanied by eased access to existing benefits or new benefit provisions for older unemployed workers, particularly those with limited skills or partial disabilities. Many countries have recognized this issue through such benefit provisions.[47]

Conclusion

My analysis has revealed deficiencies in the theory that underlies contractual mandatory retirement and its advocates' claims that banning the practice would be economically damaging. I find that the arguments for retaining CMR:

- Make the simplifying but erroneous assumption that collective agreements are equivalent to consensual agreements between the individual worker and the employer;

45 See Brown (1995, p. 21), who shows a further increase to nearly age 71 by 2031.

46 A recent consultation paper on the Quebec Pension Plan suggested raising the rate of benefit enhancement per month of delayed retirement above age 65 from 0.5 percent to 0.7 percent (Régie des rentes du Québec, 2003, p. 29).

47 In 1984 the Quebec Pension Plan began allowing disability pensions (higher than retirement pensions) for contributors 60-to-64 if they were unable to perform their usual work, while disability pensions for younger contributors required that they be unable to perform any type of work. Recently it has been proposed to remove this differential ease of access to disability pensions for older workers (Régie des rentes du Québec, 2003, pp. 30-31).

- Discount the preferences of some workers who may have little choice in the matter, especially women and recent immigrants;
- Assume unrealistically that workers early in their lives have good foresight about what their personal, financial and health status will be when they are in their 60s;
- Ignore the external costs imposed on the economy and public treasuries by keeping some individuals from working as long as they would like, and
- Claim extensive beneficial effects for employers, workers, and the economy, yet the evidence to support this claim is lacking, inconclusive, or purely hypothetical;[48]

Jurisdictions that banned CMR years ago — such as Manitoba, Quebec, and the United States — have not manifested any of the alleged adverse consequences.

The case for allowing CMR to continue is based on economic analysis that presumes markets always produce desirable results. One proponent has argued: "Since the current package of rules [including CMR] has evolved from market forces and without legislated restraints, economic theory prescribes that ... [a ban on CMR] must entail a net loss in efficiency."[49] This presumption was accepted by the Supreme Court in its landmark 1990 ruling to permit age discrimination on the basis of the asserted economic benefits.[50] Yet, discrimination in hiring and pay by sex and race of worker were once the norm in Canadian labour markets — the outcome of competitive forces and thus, presumably, "efficient." Legislative bans have reduced these unwarranted forms of discrimination and also stimulated incentives for advanced education and labour force activity by groups that have made increasing contributions to the economy. The same point could be made about age discrimination and a prospective ban on CMR.

In an earlier era it was commonly argued that married women should stay out of the workforce to preserve jobs for men. This is no different than the contemporary argument that older workers should retire to make way for young job seekers. Critics have observed: "Mandatory retirement is a polite phrase for employment discrimination — for being fired because of age" (Gillen and Klassen, 2000, p. 61). While advocates of CMR say that the practice allows for the graceful termination of workers without demeaning performance reviews, a dissenting opinion in the Supreme Court's decision took a different perspective:

> The threat that an evaluation scheme will 'constitute a demeaning affront to individual dignity' is difficult to accept. Are objective standards of job performance a demeaning affront to individual dignity? Certainly not when measured against the prospect of getting 'turfed-out' automatically at a prescribed age, and witnessing your younger ex-colleagues persevere in condoned relative incompetence on the strength of a 'dignifying' tenure system. ...

48 Indeed, the leading Canadian labour economics textbook states that "there is virtually a complete absence of research on the impact that banning retirement will have on other aspects of the employment relationship [besides the length of employment]." Benjamin et al. (2002, p. 411).

49 Pesando (1979, p. 3), but similar quotations could be drawn from Lazear (1979), Gunderson and Pesando (1988), Benjamin et al. (2002), or Gunderson (2003, 2004).

50 The majority decision in McKinney drew significantly on arguments presented by economics professors Morley Gunderson and James Pesando.

> Forced removal from the workforce strictly on account of age can be extraordinarily debilitating for those entering their senior years.[51]

Mandatory retirement, even if in a contractual agreement between workers and their employer, cannot be justified on economic or social grounds. As a result, CMR agreements should not be exempted from the prohibition of age discrimination on the basis that they constitute "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society" (section 1 of the Charter). Because of emerging labour shortages, looming public finance stresses, and newer economic evidence, the earlier Supreme Court decisions on CMR will inevitably be challenged.[52] Indeed, one lower court decision has already urged such a legal challenge.[53] But there is no reason for the provinces to await judicial action before proceeding. The remaining provinces should follow the lead taken more than 20 years ago by Manitoba and Quebec in banning CMR in both public and private sectors.[54] If the Ontario government carries out its undertaking to ban CMR, most other provinces will likely follow in quick succession.

Provincial bans on mandatory retirement could still offer flexibility for the few areas where it might be deemed appropriate. Human rights codes could allow contractual agreements on a one-to-one basis between employers and individual employees, such as senior executive contracts with a limited work spell. They could also continue to allow for retirement at a specified age in the few lines of work where age is demonstrably a "bona fide occupational requirement" and where individual performance cannot reasonably be assessed. The codes could additionally allow special treatment for older workers in areas such as disability insurance and pension benefits. This could moderate employers' costs of employing older workers and thus help to avert age discrimination in hiring and other employment practices.

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51 *McKinney v. University of Guelph*, [1990] 76 D.L.R. (4th) 545, at 686-87.

52 Following its decision in *Vriend v. Alberta* [1998] 1 S.C.R. 493, the Supreme Court could choose to "read into" provincial human rights legislation protection against mandatory retirement based on section 15 of the Charter. In that way, CMR could be prohibited in private-sector and quasi-public as well as governmental employment, though such a "judicial legislative" tack is not the ideal solution.

53 In *GVRD Employees' Union v. GVRD* [2001] BCCA 435, a justice of the B.C. Court of Appeal writing for the majority stated: "I would urge the Supreme Court of Canada to reconsider this issue. Eleven years have now passed since *McKinney* was decided. The demographics of the workplace have changed considerably, not only with respect to the university community, but also in the workplace at large. ... The extent to which mandatory retirement policies impact on other equality rights, and on the mobility of the workforce, have become prominent social issues. The social and legislative facts now available may well cast doubt on the extent to which the courts should defer to legislative decisions made over a decade ago. The issue is certainly one of national importance." At par. 127.

54 Gunderson (2004) has recommended that provinces ban all forms of age discrimination for workers except CMR (moving four provinces from the first to the second column of Table 1). Yet, this approach would leave untouched the most basic form of age discrimination in the workplace.

55 In advocating a ban on CMR, the Ontario Human Rights Commission (2001, p. 40) nevertheless recognized that it might be desirable to allow differential treatment by age of worker in employee benefit and pension plans.

Banning mandatory retirement is just one element in a package of changes in business practice and public policy needed to make better use of an aging workforce. As seen by the experience in jurisdictions where CMR has been banned for many years, it is not a radical change nor have the alleged adverse effects emerged. While a ban on CMR alone would not bring about a large increase in employment of older workers or average retirement ages, it could spur other changes by employers and governments that would have significant effects over time. Such a ban would also remove a key element of age discrimination that cannot be justified on economic or practical grounds. A ban on CMR would benefit not only those who would like to work longer, but by stimulating business and policy changes, it would also benefit other older workers, businesses, public finances, and the overall economy.

References

Ashenfelter, Orley and David Card. 2002. "Did the Elimination of Mandatory Retirement Affect Faculty Retirement?" *American Economic Review*, 92(4: September), 957-80.

Baker, Michael, Jonathan Gruber and Kevin Milligan. 2003. "The Retirement Incentive Effects of Canada's Income Security Programs." *Canadian Journal of Economics*, 36(2: May), 261-90.

Baxter, David and Andrew Ramlo. 2003. "Changing People, Changing Participation: Demographic and Behavioral Trends as a Context for the Future of the Canada Pension Plan, 2001 to 2051." Paper presented at the Third Inter-Disciplinary Seminar of the Office of the Chief Actuary (May), posted at the website of the Office of the Superintendent of Financial Institutions, www.osfi-bsif.gc.ca/eng/newscentre/speeches/pdf/Baxter_e/pdf.

Benjamin, Dwayne, Morley Gunderson and W. Craig Riddell. 2002. *Labour Market Economics: Theory, Evidence, and Policy in Canada*, Fifth ed. Toronto: McGraw-Hill Ryerson.

Brown, Robert L. 1995. "Achieving Stability and Equity with Paygo Funding." *Policy Options/Options politiques*, 16(7: September), 17-21.

Diamond, P.A. 1977. "A Framework for Social Security Analysis." *Journal of Public Economics*, 8(3: December), 275-298.

Diamond, Peter and Botond Kőszegi. 2003. "Quasi-Hyperbolic Discounting and Retirement." *Journal of Public Economics*, 87(9-10: September), 1839-1872.

Dunlop, Donald P. 1980. *Mandatory Retirement: A Human Rights Dilemma?* Ottawa: The Conference Board of Canada.

Duchesne, Doreen. 2004. "More Seniors at Work." *Perspectives on Labour and Income*, 5(2: February), 5-17.

Fourzly, Michel and Marc Gervais. 2002. *Collective Agreements and Older Workers in Canada*. Labour Program, Human Resources Development Canada. Ottawa:HRDC.

Gillin, C.T. and Thomas R. Klassen. 2000. "Retire Mandatory Retirement." *Policy Options/Options politiques*, 21(6: July-August), 59-62.

Gunderson, Morley. 1998. *Flexible Retirement as an Alternative to 65 and Out*. C.D. Howe Institute Commentary 106. Toronto: C.D. Howe Institute, May.

———. 2003. "Age Discrimination in Employment in Canada." *Contemporary Economic Policy*, 21(3: July), 318-28.

———. 2004). *Banning Mandatory Retirement: Throwing Out the Baby with the Bathwater*. C.D. Howe Institute Backgrounder 79. Toronto: C.D. Howe Institute, March.

Gunderson, Morley and James Pesando. 1988. "The Case for Allowing Mandatory Retirement." *Canadian Public Policy/Analyse de politiques*, 14(1: March), 32-39.

Hellerstein, Judith K., David Neumark and Kenneth R. Troske. 1999. "Wages, Productivity, and Worker Characteristics: Evidence from Plant-Level Functions and Wage Equations." *Journal of Labor Economics*, 17(3: July), 409-46.

Hewitt Associates. 2003. *Mandatory Retirement: Current Practice and Future Directions Survey* Report Toronto: September 16.

Human Resources Development Canada. 2002. *Challenges of an Aging Workforce: An Overview of the Issue*. Ottawa:HRDC.

Kotlikoff, Laurence J. and Jagadeesh Gokhale. 1992. "Estimating a Firm's Age-Productivity Profile Using the Present Value of Workers' Earnings." *Quarterly Journal of Economics*, 107(4: November), 1215-1242.

Krashinsky, Michael. 1988. "The Case for Eliminating Mandatory Retirement: Why Economics and Human Rights Need Not Conflict." *Canadian Public Policy/Analyse de politiques*, 14(1: March), 40-51.

Labour Canada. 1985. *An Industrial Relations Perspective on Mandatory Retirement*. Ottawa: Labour Canada.

Lazear, Edward P. 1979. "Why Is There Mandatory Retirement?" *Journal of Political Economy*, 87(6: December), 1261-84.

Neumark, David and Wendy A. Stock. 1999. "Age Discrimination Laws and Labor Market Efficiency." *Journal of Political Economy*, 107(5: October), 1081-1125.

Office of the Chief Actuary. 2002. Office of the Superintendent of Financial Institutions, *Actuarial Report (5th) on the Old Age Security Program as at 31 December 2000*, tabled in Parliament on June 19.

Ontario Human Rights Commission. 2001. *Time for Action: Advancing Human Rights for Older Ontarians*. Report, Toronto: June.

Organisation for Economic Co-operation and Development. 2001. *Ageing and Income: Financial Resources and Retirement in 9 OECD Countries*. Paris: OECD.

Pesando, James E. 1979. *The Elimination of Mandatory Retirement: An Economic Perspective*. Toronto: Ontario Economic Council.

Policy Research Initiative. 2004. *Population Aging and Life-Course Flexibility: The Pivotal Role of Increased Choice in the Retirement Decision*. Discussion Paper. Ottawa: March.

Prendergast, Canice. 1999. "The Provision of Incentives in Firms." *Journal of Economic Literature*, 37(1: March), 7-63.

Regie des rentes du Quebec. 2003. *Adapting the Pension Plan to Quebec's New Realities*. Working Paper. Quebec City: Ministry of Employment, Social Solidarity and Family Welfare. October.

Reid, Frank. 1988. "Economic Aspects of Mandatory Retirement: The Canadian Experience." *Relations Industrielles*, 43(1), 101-13.

Richter, Josef. 1992. "Economic Aspects of Aging: Review of the Literature." In George J. Stolnitz, ed., *Demographic Causes and Economic Consequences of Population Aging: Europe and North America*. New York: United Nations Economic Commission for Europe, 171-186.

Robson, William B.P. 1996. *Putting Some Gold in the Golden Years: Fixing the Canada Pension Plan*. C.D. Howe Institute Commentary 76. Toronto: C.D. Howe Institute, January.

———. 2001. *Aging Populations and the Workforce: Challenges for Employers*. British-North American Committee, at website of the C.D. Howe Institute, www.cdhowe.org/pdf/BNAC_Aging_Populations.pdf .

Shannon, M. and D. Grierson. 2004. "Mandatory Retirement and Older Worker Employment." *Canadian Journal of Economics*, 37(3: August).

Snyder, Stephen E. and William N. Evans. 2002. *The Impact of Income on Mortality: Evidence from the Social Security Notch*. Working Paper 9197. Cambridge, MA: National Bureau of Economic Research, September.

Statistics Canada. 1998. *Labour Force Update: Older Workers*, 2(2: Spring). S.C. catalogue 71-005-XPB.

Sterns, Anthony A., Harvey L. Sterns and Lisa A. Hollis. 1996. "The Productivity and Functional Limitations of Older Adult Workers." In William H. Crown, ed., *Handbook on Employment and the Elderly*. Westport, CT: Greenwood Press, 276-303.

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